
SELECTED FCC DOCKET SUMMARIES, 2009

***In re* Implementation of the DTV Delay Act; DTV Consumer Education Initiative; Third Periodic Review of the Commission's Rules and Policies Affecting the Conversion To Digital Television; Implementation of Short-term Analog Flash and Emergency Readiness Act; Establishment of DTV Transition "Analog Nightlight" Program; Service Rules for the 698-746, 747-762 and 777-792 MHz Bands; Former Nextel Communications, Inc. Upper 700 MHz Guard Band Licenses and Revisions to Part 27 of the Commission's Rules; Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band; Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Communications Requirements Through the Year 2010, *Second Report and Order and Notice of Proposed Rulemaking*, FCC 09-11, MB Docket No. 09-17, MB Docket No. 07-148, MB Docket No. 07-91, MB Docket No. 08-255, WT Docket No. 06-150, WT Docket No. 06-169, PS Docket No. 06-229, WT Docket No. 96-86 (Feb. 20, 2009).**

On February 20, 2009, the Federal Communications Commission ("Commission") adopted a *Second Report and Order and Notice of Proposed Rulemaking* ("Order") to implement the *DTV Delay Act*, (Pub. L. No. 111-4, 123 Stat. 112 (2009) ("*Act*")), which postponed the DTV transition deadline from February 17, 2009 to June 12, 2009. The Commission sought to give consumers more time to prepare for the transition to digital broadcasting. The *Order* amended several rules that were issued to prepare for the DTV transition, the *DTV Consumer Education Initiative* rules, the *Third DTV Periodic Report and Order*, the *700 MHz Band License Periods and Construction Requirements*, and the *Analog Nightlight* and sought comments on further changes that are necessary or appropriate to implement the new transition deadline.

To inform consumers and viewers about the digital transition, the Commission extended the *DTV Consumer Education Initiative* rules that were created in 2008. The *Order* amends these rules to require continued consumer education through June 30, 2009. Specifically, the *Order* updates the consumer notice guidance utilized by manufacturers, eligible telecommunications carriers, and multichannel video programming distributors, and requires that this guidance be incorporated into consumer notices by April 1, 2009. The original Education Initiative provided broadcasters with three options for implementing consumer education, which are also altered by the *Order*. Option One com-

mercial broadcasters are required to use the revised guidance text as the basis for on-air notices and to provide the maximum level of consumer education, which involves “three [public service announcements] and three crawls in each quarter of the day.” Option Two commercial broadcasters were required to begin a new 100-day countdown to the June 12, 2009 transition on March 4, 2009, and Option Three noncommercial educational broadcasters must continue broadcasting three minutes of transition education per day, with 22.5 minutes per month during prime time. All broadcasters and 700 MHz auction winners must also continue reporting their consumer education efforts through the new transition date. However, the *DTV.gov Transition Partners* program is discontinued, and no further filings are required.

The *Order* also amended the *Third DTV Periodic Report and Order*, rescheduling the deadline for stations to complete the construction of digital facilities to June 12, 2009, and requiring stations to set, by March 17, 2009, a binding analog service termination date of no later than June 12, 2009. Stations that plan to end their analog services before June 12, 2009 must file early termination notices after the Commission releases the analog service termination procedures and before March 17, 2009. No station will be allowed to terminate analog service before April 16, 2009. In addition to reporting their intended termination dates, all full-power television stations must complete a revised FCC Form 387, the *DTV Transition Status Report*, no later than April 16, 2009, explaining (1) the steps they have taken to prepare for the transition, (2) additional steps necessary to complete the transition, and (3) their plan to meet the deadline.

As required by the *Act*, the license terms, construction benchmarks, and reporting requirements for *recovered spectrum* are also amended. The Commission’s current rules provide that the licenses for the 698 to 763 MHz and 776 to 793 MHz bands expire ten years from February 17, 2009, the original transition deadline. The *Order* defines *recovered spectrum* to include all spectrum between frequencies 698 and 806 MHz and extends the license requirements for 116 days to match the new transition deadline.

The *Order* also postpones the Commission's *Analog Nightlight Order*. The *Analog Nightline Order* was implemented to continue analog service for thirty days following the DTV transition and provide emergency and transition information to viewers who are still without the necessary equipment to receive digital broadcasts. The *Order* establishes June 13, 2009 through July 12, 2009 as the new thirty-day Nightlight period.

Summarized by Peter Kielty

In re Investigation of the Spectrum Requirements for Advanced Medical Technologies; Amendment of Parts 2 and 95 of the Commission's Rules to Establish the Medical Device Radiocommunication Service at 401-402 and 405-406 MHz; DexCom, Inc. Request for Waiver of the Frequency Monitoring Requirements of the Medical Implant Communications Service Rules; Biotronik, Inc., Request for Waiver of the Frequency Monitoring Requirements of the Medical Implant Communications Service Rules, Report and Order, FCC 09-23, ET Docket No. 06-135, RM-11271, ET Docket No. 05-213, ET Docket No. 03-92 (March 19, 2009)

On March 19, 2009, the Federal Communications Commission ("FCC" or "Commission") adopted a *Report and Order* establishing a new Medical Device Radiocommunication Service ("MedRadio") to address the issue of spectrum availability for implanted and body-worn medical devices that treat human patients by using wireless technologies. The new service incorporates the existing "core" band, Medical Implant Communications Service (MICS), at 402-405 MHz, as well as two newly allocated megahertz of spectrum in adjacent "wing" bands at 401-402 MHz and 405-406 MHz. The MedRadio service will make a total of five megahertz of spectrum available for wireless medical radiocommunication devices used in the diagnostic and therapeutic treatment of humans.

The Commission's decision expands the types of devices that will be available to treat patients. The Commission found that the existing MICS rules adopted in 1999 no longer adequately served the needs of medical device manufacturers or patients because the rules limited the available spectrum for medically implanted devices and required the devices to include "listen-before-talk" ("LBT") technologies. The new rules expand upon the MICS rules by permitting the use of body-worn devices and allowing either implanted or body-worn devices to operate without LBT technologies if the device runs at low power and low duty cycle (LP-LDC).

MICS rules regulated implanted devices using wireless functionalities such as cardiac pacemakers and defibrillators. The wireless functions allow these

devices to be used without external wired connections. The wireless functionalities of the devices benefit both patients and doctors by providing doctors with capabilities such as the ability to wirelessly retrieve data and make any necessary operating parameter adjustments. The rules promulgated in MedRadio are a recognition by the Commission that recent advances in the medical device field, particularly the development of body-worn devices, offered patients the ability to be treated for medical conditions that could not be previously treated. For example, under MedRadio, new devices such as implanted vagus nerve stimulators could be used to treat severe chronic depression by sending electric pulses to the brain.

Under MedRadio, medical implant devices that are LBT-enabled will be allowed to operate across designated portions of the full 401–406 MHz band, but medical body-worn devices that are LBT-enabled will be limited to operation on the 401–402 and 405–406 MHz bands. An exception to the latter rule will allow body-worn devices to operate on the 402–405 MHz band in cases where the patient is being evaluated by a doctor for the suitability of a fully implanted device, subject to all other MedRadio rules. As under MICS, MedRadio devices may only be used by human patients under the supervision of an authorized health care professional and only for non-voice communications for diagnostic and therapeutic purposes.

In the *Report and Order*, the Commission stated that it hoped by making additional spectrum available and providing greater operational flexibility to these medical devices, manufacturers will be encouraged to create more advanced medical device technologies. Consequently, the Commission believes that these devices will likely provide patients with a range of significant benefits including lower medical costs as well as fewer hospital visits and surgical procedures.

Finally, in adopting the MedRadio designation and rules, the FCC sought to synchronize its rules for these devices with standards in Europe and in other regions of the world. The Commission concluded that the synchronization of its standards with those of large parts of the world would benefit users of such technologies by providing them with more frequent device compatibility during travels abroad. The Commission also hoped that synchronization will allow manufacturers to more easily and widely distribute their devices. As a result, manufacturers will see increased sales, which will allow them to offer the devices to consumers at lower prices.

Summarized by Jeffrey Alberg